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February 7

Dr. Austin J. McGaffrey  
Commissioner of Education  
Department of Education  
State House Annex

Dear Sir:

You have requested advice from this office relative to the legal procedure and the conditions under which a police officer may take a child from school.

I am unaware of any law or opinions from this office which deal directly with this question. We must therefore assume that the police officer has the same powers in relation to arrest and detention of children as he has in relation to adults. This problem is made more complex by the fact that while in school children are subject to the control of the school officials. I would assume that the school officials act in a similar capacity to the children as do the parents when they are at home.

It would seem to me that this problem should be solved by mutual considerations of both the school officials and the police. However, as this is not always possible the best procedure is to consider the law as it applies to arrest by police officers.

Generally speaking, a police officer may arrest with a warrant wherever the person is found. RSA 594:7. If the police officer does not have a warrant he may arrest any person who has committed a felony and he has reasonable grounds to believe that the person arrested committed the felony, or he may arrest any person committing a misdemeanor in his presence.

Cooperation between the police and the principal of the school should result in creating as little disturbance as possible at any time when a minor is to be detained.

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Dr. Austin J. McCaffrey

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Under normal circumstances it would seem that such detention should be accomplished after school hours and this would certainly be more satisfactory for all concerned. I would also assume that the principal of the school should notify parents of any child who has been detained by the police.

Very truly yours,

Arthur E. Bean, Jr.  
Assistant Attorney General

AEB,Jr/T